In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1806

REID SMITH, PETITIONER

v.

ROGERS C. B. MORTON

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioner sought to patent sixteen mining claims under 30 U.S.C. 29. The claims were located in the Long Valley Mining District of Arizona and petitioner's application for patents alleged the discovery of valuable deposits of manganese, a mineral used in the production of steel. The Bureau of Land Management contested petitioner's claims on the ground, *inter alia*, that there was no valid discovery within the meaning of the mining laws.

After hearings on petitioner's claims, the Department of the Interior Hearing Examiner found for petitioner and dismissed the contest. The Hearing Examiner's decision was affirmed by the Director of the Bureau of Land Management. On appeal the Deputy Solicitor of the Department of the Interior reversed the decision of the Hearing Examiner, finding that the market for domestic

manganese was depressed by imports[1] and, therefore, that petitioner had not made a discovery of a "valuable" mineral deposit as required by 30 U.S.C. 29 (Pet. App. C).

Petitioner brought suit against the Secretary of the Interior to set aside the decision. The district court granted the Secretary's motion for summary judgment and dismissed the complaint (Pet. App. B). The court of appeals affirmed (Pet. App. A).

Petitioner's sole contention — that the court of appeals erred in approving the application of a "marketability" test in determining whether a claim was based on discovery of valuable mineral deposits — is without merit.[2] The decision of the court of appeals is consistent with its prior decisions (*e.g.*, *Barrows* v. *Hickel*, 447 F. 2d 80; *Mulkern* v. *Hammitt*, 326 F. 2d 897; *Adams* v. *United States*, 318 F. 2d 861), and with this Court's opinion in *United States* v. *Coleman*, 390 U.S. 599.[3] There is thus no occasion for further review by this Court.

As this Court noted in *United States* v. *Coleman*, *supra*, 390 U.S. at 602, "[u]nder the mining laws Congress has made public lands available to people for the purpose of mining valuable mineral deposits and

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[1]The Deputy Solicitor found that "manganese has not been sold form the area in recent years and there is no evidence that sales may reasonably be expected in the future" (Pet. App. C, 12a-13a).

[2]Petitioner concedes that present market conditions do not permit the profitable mining of manganese (Pet. 11).

[3]Petitioner's contention that *Coleman* applies only to nonmetallic mineral deposits (Pet. 9, 11) is erroneous. This Court expressly indicated that marketability is a factor to be considered in metallic mineral deposits, although ordinarily such minerals are economically valuable. 390 U.S. at 603.

not for other purposes." It would be contrary to the purpose of the mining laws to permit the issuance of patents on the basis of possible future value since to do so would allow portions of the public domain to be obtained by private interests solely for speculation.

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

SEPTEMBER 1974.

DOJ-1974-09